

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 11, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 business and other associations.
- 4 Delete everything after the enacting clause and insert the
- 5 following:
- 6 SECTION 1. IC 23-2-1-2 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) The following
- 8 securities are exempted from the registration requirements of section 3
- 9 of this chapter:
- 10 (1) A security (including a revenue obligation) issued or
- 11 guaranteed by the United States, a state, a political subdivision
- 12 of a state, or an agency or corporate or other instrumentality of
- 13 one (1) or more of the foregoing or a certificate of deposit for
- 14 any of the foregoing.
- 15 (2) A security issued or guaranteed by Canada, a Canadian
- 16 province, a political subdivision of a Canadian province, an
- 17 agency, or corporate or other instrumentality of one (1) or more
- 18 of the foregoing, or any other foreign government with which the
- 19 United States currently maintains diplomatic relations, if the
- 20 security is recognized as a valid obligation by the issuer or
- 21 guarantor.
- 22 (3) A security issued by and representing an interest in or a debt
- 23 of, or guaranteed by a bank organized under the laws of the
- 24 United States, a bank, savings institution, or trust company
- 25 organized and supervised under the laws of a state, a federal
- 26 savings association, a savings association organized under the
- 27 laws of a state and authorized to do business in Indiana, a federal

credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state, or a corporation or organization whose issuance of securities is required by any other law to be passed upon and authorized by the department of financial institutions or by a federal agency or authority.

(4) A security issued or guaranteed by a railroad or other common or contract carrier, a public utility, or a common or contract carrier or public utility holding company. However, an issuer or guarantor must be subject to regulation or supervision as to the issuance of its own securities by a public commission, board, or officer of the government of the United States, of a state, territory, or insular possession of the United States, of a municipality located in a state, territory, or insular possession, of the District of Columbia, or of the Dominion of Canada or a province of Canada.

(5) A security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, or on any other exchange approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing.

(6) A promissory note, draft, bill of exchange, or banker's acceptance that is evidence of:

(A) an obligation;

(B) a guarantee of an obligation;

(C) a renewal of an obligation; or

(D) a guarantee of a renewal of an obligation;

to pay cash within nine (9) months after the date of issuance, excluding grace days, that is issued in denominations of at least fifty thousand dollars (\$50,000) and receives a rating in one (1) of the three (3) highest rating categories from a nationally recognized statistical rating organization.

(7) A security issued in connection with an employee stock purchase, savings, pension, profit-sharing, or similar benefit plan.

(8) A security issued by an association incorporated under IC 15-7-1.

(9) A security that is an industrial development bond (as defined in Section 103(b)(2) of the Internal Revenue Code of 1954) the interest of which is excludable from gross income under Section 103(a)(1) of the Internal Revenue Code of 1954 if, by reason of the application of paragraph (4) or (6) of Section 103(b) of the Internal Revenue Code of 1954 (determined as if paragraphs (4)(A), (5), and (7) were not included in Section 103(b)), paragraph (1) of Section 103(b) does not apply to the security.

(10) A security issued by a nonprofit corporation that meets the requirements of Section 103(e) of the Internal Revenue Code of 1954 and is designated by the governor as the secondary market for guaranteed student loans under IC 20-12-21.2.

(11) A security designated or approved for designation upon notice of issuance on the National Association of Securities Dealers Automatic Quotation National Market System or any other national market system approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing.

(12) A security that is a "qualified bond" (as defined in Section 141(e) of the Internal Revenue Code, as amended).

(b) The following transactions are exempted from the registration requirements of section 3 of this chapter:

(1) An isolated nonissuer offer or sale, whether effected through a broker-dealer or not.

(2) A nonissuer sale effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy.

(3) A nonissuer offer or sale by a registered broker-dealer, acting either as principal or agent, of issued and outstanding securities if the following conditions are satisfied:

(A) The securities are sold at prices reasonably related to the current market price at the time of sale, and if the registered broker-dealer is acting as agent, the commission collected by the registered broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.

(B) The securities do not constitute an unsold allotment to or subscription by the broker-dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

(C) Either:

(i) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen (18) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is published in a securities manual approved by the commissioner;

(ii) the issuer is required to file reports with the Securities and Exchange Commission pursuant to sections 13 and 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and is not delinquent in the filing of the reports on the date of the sale; or

(iii) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than sixteen (16) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is on file with the commissioner. The information required by this item to be on file with the commissioner must be on a form and

made in a manner as the commissioner prescribes. The fee for the initial filing of the form shall be twenty-five dollars (\$25). The fee for the annual renewal filing shall be fifteen dollars (\$15). When a filing is withdrawn or is not completed by the issuer, the commissioner must retain the filing fee.

(D) There has been compliance with section 6(l) of this chapter.

(E) Unless the issuer is registered under the Investment Company Act of 1940, all the following must be true at the time of the transaction:

(i) The security belongs to a class that has been in the hands of the public for at least ninety (90) days.

(ii) The issuer of the security is a going concern, is actually engaged in business, and is not in bankruptcy or receivership.

(iii) Except as permitted by order of the commissioner, the issuer and any predecessors have been in continuous operation for at least five (5) years. An issuer or predecessor is in continuous operation only if the issuer or predecessor has gross operating revenue in each of the five (5) years immediately preceding the issuer's or predecessor's claim of exemption and has had total gross operating revenue of at least two million five hundred thousand dollars (\$2,500,000) for those five (5) years or has had gross operating revenue of at least five hundred thousand dollars (\$500,000) in not less than three (3) of those five (5) years.

The commissioner may revoke the exemption afforded by this subdivision with respect to any securities by issuing an order:

(i) if the commissioner finds that the further sale of the securities in this state would work or tend to work a fraud on purchasers of the securities;

(ii) if the commissioner finds that the financial condition of the issuer is such that it is in the public interest and is necessary for the protection of investors to revoke or restrict the exemption afforded by this subsection; or

(iii) if the commissioner finds that, due to the limited number of shares in the hands of the public or due to the limited number of broker-dealers making a market in the securities, there is not a sufficient market for the securities so that there is not a current market price for the securities.

(4) A transaction between the issuer or other person on whose behalf the offering is made by an underwriter, or among underwriters.

(5) A transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds

- or other evidences of indebtedness, is offered and sold as a unit.
- (6) A transaction by an executor, administrator, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or a person acting in a trust or fiduciary capacity where the transaction is effected pursuant to the authority of or subject to approval by a court of competent jurisdiction.
- (7) A transaction executed by a bona fide pledgee without any purpose of evading this chapter.
- (8) An offer or sale to a bank, a savings institution, a trust company, an insurance company, an investment company (as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-52)), a pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity.
- (9) The offer or sale of securities of an issuer:
- (i) to a person who is:
    - (A) a director, an executive officer, a general partner, an administrator, or a person who performs similar functions for or who is similarly situated with respect to the issuer;
    - (B) a director, an executive officer, or a general partner of a general partner of the issuer; or
    - (C) any other natural person employed on a full-time basis by the issuer as an attorney or accountant if the person has been acting in this capacity for at least one (1) year immediately prior to the offer or sale;
  - (ii) to an entity affiliated with the issuer;
  - (iii) if the issuer is a corporation, to a person who is the owner of shares of the corporation or of an affiliated corporation representing and possessing ten percent (10%) or more of the total combined voting power of all classes of stock (of the corporation or affiliated corporation) issued and outstanding and who is entitled to vote; or
  - (iv) if the issuer is a limited liability company, to a person who is the owner of an interest in the limited liability company representing and possessing at least ten percent (10%) of the total combined voting power of all classes of such interests (of the limited liability company or affiliated limited liability company) issued and outstanding.
- (10) The offer or sale of a security by the issuer of the security if all of the following conditions are satisfied:
- (A) The issuer reasonably believes that either:
    - (i) there are no more than thirty-five (35) purchasers of the securities from the issuer in an offering pursuant to this subsection, including purchasers outside Indiana; or
    - (ii) there are no more than twenty (20) purchasers in Indiana.
- In either case, there shall be excluded in determining the

number of purchasers a purchaser whom the issuer reasonably believes to be an accredited investor or who purchases the securities after they are registered under this chapter.

(B) The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation.

(C) The issuer reasonably believes that each purchaser of the securities is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:

(i) obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and

(ii) placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under section 3 of this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities.

(D) The issuer:

(i) files with the commissioner and provides to each purchaser in this state an offering statement that sets forth all material facts with respect to the securities; and

(ii) reasonably believes immediately before making a sale that each purchaser who is not an accredited investor either alone or with a purchaser representative has knowledge and experience in financial and business matters to the extent that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(E) If the aggregate offering price of the securities in an offering pursuant to this subdivision (including securities sold outside of Indiana) does not exceed five hundred thousand dollars (\$500,000), the issuer is not required to comply with clause (D) if the issuer files with the commissioner and provides to each purchaser in Indiana the following information and materials:

(i) copies of all written materials, if any, concerning the securities that have been provided by the issuer to any purchaser; and

(ii) unless clearly presented in all written materials, a written notification setting forth the name, address, and form of organization of the issuer and any affiliate, the nature of the principal businesses of the issuer and any affiliate, and the information required in section 5(b)(1)(B), 5(b)(1)(C), 5(b)(1)(D), 5(b)(1)(E), 5(b)(1)(H), and 5(b)(1)(I) of this chapter.

(F) The commissioner does not disallow the exemption

provided by this subdivision within ten (10) full business days after receipt of the filing required by clause (D) or (E). The issuer may make offers (but not sales) before and during the ten (10) day period, if:

(i) each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and

(ii) no enforceable offer to purchase the securities may be made by a prospective purchaser, and no consideration in any form may be accepted or received (directly or indirectly) from a prospective purchaser, before the expiration of the ten (10) day period and the vacation of an order disallowing the exemption.

(G) The issuer need not comply with clause (D), (E), or (F) if:

(i) each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;

(ii) there are not more than fifteen (15) purchasers in Indiana and each Indiana purchaser is an accredited investor or is a purchaser described in item (i); or

(iii) the aggregate offering price of the securities, including securities sold outside Indiana, does not exceed five hundred thousand dollars (\$500,000), the total number of purchasers, including purchasers outside of Indiana, does not exceed twenty-five (25) and each purchaser either receives all of the material facts with respect to the security or is an accredited investor or a purchaser described in item (i).

(H) If the issuer makes or is required to make a filing with the commissioner under clause (D) or (E), the issuer must also file with the commissioner at the time of the filing the consent to service of process required by section 16 of this chapter. The issuer shall also file with the commissioner, at the times and in the forms as the commissioner may prescribe, notices of sales made in reliance upon this subdivision.

(I) The commissioner may by rule deny exemption provided in this subdivision to a particular class of issuers, or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter.

(11) An offer or sale of securities to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance if no commission or other remuneration (other than a standby commission) is paid or given

for soliciting a security holder in this state.

(12) An offer (but not a sale) of a security for which registration statements or applications have been filed under this chapter and the Securities Act of 1933 (15 U.S.C. 77a-77aa), if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either law.

(13) The deposit of shares under a voting-trust agreement and the issue of voting-trust certificates for the deposit.

(14) The offer or sale of a commodity futures contract.

(15) The offer or sale of securities to or for the benefit of security holders incident to a vote by the security holders pursuant to the articles of incorporation or applicable instrument, on a ~~merger or share exchange under IC 23-1-40 or the laws of another state;~~ **statutorily approved merger or share exchange**, reclassification of securities, exchange of securities under IC 28-1-7.5, or sale of assets of the issuer in consideration of the issuance of securities of the same or another issuer.

(16) A limited offering transactional exemption, which may be created by rule adopted by the commissioner. The exemption must further the objectives of compatibility with federal exemptions and uniformity among the states.

(c) The commissioner may consider and determine if a proposed sale, transaction, issue, or security is entitled to an exemption accorded by this section. The commissioner may decline to exercise the commissioner's authority as to a proposed sale, transaction, issue, or security. An interested party desiring the commissioner to exercise the commissioner's authority must submit to the commissioner a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which must be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of one hundred dollars (\$100). After notice to the interested parties as the commissioner determines is proper and after a hearing, if any, the commissioner may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption claimed. An order entered, unless an appeal is taken from it in the manner prescribed in section 20 of this chapter, is binding upon the commissioner and upon all interested parties, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement submitted.

(d) The commissioner may by order deny or revoke an exemption specified in subsection (a)(6), (a)(7), or (b) with respect to a specific security or transaction, if the commissioner finds that the securities to which the exemption applies would not qualify for registration under sections 4 and 5 of this chapter. No order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specific exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of

the reasons for the order, and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 3 of this chapter by reason of an offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(e) If, with respect to an offering of securities, any notices or written statements are required to be filed with the commissioner under subsection (b)(10), the first filing made with respect to the offering must be accompanied by a filing fee of one hundred dollars (\$100).

(f) A condition, stipulation, or provision requiring a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

SECTION 2. IC 23-2-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. (a) A registered broker-dealer shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner requires by rule or otherwise. The commissioner's requirements may not exceed the limitations provided in Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o).

(b) An investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner requires by rule or otherwise. The commissioner's requirements may not exceed the limitations provided in Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a). The commissioner may prescribe by rule or otherwise the period that an investment adviser must retain records.

(c) All the records of a registered broker-dealer or an investment adviser are subject at any time to reasonable periodic, special, or other examinations by representatives of the commissioner, within or without Indiana, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. No charges or other examination fees may be assessed against a registered broker-dealer or an investment adviser as a result of an examination under this subsection unless the examination results in an investigation or examination made under section 16(d) of this chapter. To avoid duplication of examinations of records, the commissioner may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities and Exchange Act of 1934 (15 U.S.C. 77b et seq.).

(d) Every registered broker-dealer and investment adviser shall file financial reports and other reports as the commissioner by rule or order prescribes. The commissioner's reporting requirements for registered

broker-dealers may not exceed the limitations provided in Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o). The commissioner's reporting requirements for investment advisers may not exceed the limitations provided in Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a).

(e) If the information contained in a document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(f) The commissioner may require investment advisers to furnish or disseminate certain information necessary or appropriate for the public interest or to protect investors or clients. The commissioner may determine that the information furnished to clients or prospective clients of an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq.) and the rules adopted under the Investment Advisers Act of 1940 may be used to satisfy this requirement.

(g) The commissioner may annually select as many as twenty-five percent (25%) of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. ~~The offices shall be selected at random.~~ Each broker-dealer office that is selected shall file its compliance report according to rules adopted by the commissioner under IC 4-22-2 not more than ninety (90) days after being notified of selection under this subsection. No charges or other examination fees may be assessed against a registered broker-dealer as a result of the examination of a compliance report filed under this subsection unless the examination results in an investigation or examination made under section 16(d) of this chapter.

SECTION 3. IC 23-2-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15. (a) This chapter shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this chapter under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this chapter. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

(1) shall employ a chief deputy, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this chapter; and

(2) shall fix their compensation with the approval of the budget agency.

The chief deputy, other deputies, the senior investigator, and the senior accountant, once employed under this chapter, may be dismissed only for cause by the secretary of state upon ten (10) days notice in writing stating the reasons for dismissal. Within fifteen (15) days after dismissal, the chief deputy, other deputies, the senior investigator, and the senior accountant may appeal to the state personnel board. The state personnel board shall hold a hearing, and if it finds that the appealing party was dismissed for a political, social, religious, or racial reason, the appealing party shall be reinstated to the appealing party's position

1 without loss of pay. In all other cases, if the decision is favorable to the  
2 appealing party, the secretary of state shall follow the findings and  
3 recommendations of the board, which may include reinstatement and  
4 payment of salary or wages lost. The hearing and any subsequent  
5 proceedings or appeals shall be governed by the provisions of IC 4-15-2  
6 and IC 4-21.5.

7 (c) Fees and funds of whatever character accruing from the  
8 administration of this chapter shall be accounted for by the secretary of  
9 state and shall be deposited with the treasurer of state to be deposited  
10 by the treasurer of state in the general fund of the state. Expenses  
11 incurred in the administration of this chapter shall be paid from the  
12 general fund upon appropriation being made for the expenses in the  
13 manner provided by law for the making of those appropriations.  
14 However, costs of investigations recovered under sections 16(d) and  
15 17.1(c) of this chapter shall be deposited with the treasurer of state to  
16 be deposited by the treasurer of state in a separate account to be known  
17 as the securities division enforcement account. The funds in the account  
18 shall be available, with the approval of the budget agency, to augment  
19 and supplement the funds appropriated for the administration of this  
20 chapter. The funds in the account do not revert to the general fund at  
21 the end of any fiscal year.

22 (d) In connection with the administration and enforcement of the  
23 provisions of this chapter, the attorney general shall render all  
24 necessary assistance to the securities commissioner upon the  
25 commissioner's request, and to that end, the attorney general shall  
26 employ legal and other professional services as are necessary to  
27 adequately and fully perform the service under the direction of the  
28 securities commissioner as the demands of the securities division shall  
29 require. Expenses incurred by the attorney general for the purposes  
30 stated in this subsection shall be chargeable against and paid out of  
31 funds appropriated to the attorney general for the administration of the  
32 attorney general's office.

33 (e) Neither the secretary of state, the securities commissioner, nor  
34 an employee of the securities division shall be liable in their individual  
35 capacity, except to the state, for an act done or omitted in connection  
36 with the performance of their respective duties under this chapter.

37 (f) The commissioner, subject to the approval of the secretary of  
38 state, may adopt rules, orders, and forms necessary to carry out this  
39 chapter, including rules and forms concerning registration statements,  
40 applications, reports, and the definitions of any terms if the definitions  
41 are consistent with this chapter. The commissioner may by rule or order  
42 allow for exemptions from registration requirements under sections 3  
43 and 8 of this chapter if the exemptions are consistent with the public  
44 interest and this chapter.

45 (g) The provisions of this chapter delegating and granting power  
46 to the secretary of state, the securities division, and the securities  
47 commissioner shall be liberally construed to the end that:

48 (1) the practice or commission of fraud may be prohibited and  
49 prevented;

50 (2) disclosure of sufficient and reliable information in order to  
51 afford reasonable opportunity for the exercise of independent

1 judgment of the persons involved may be assured; and  
 2 (3) the qualifications may be prescribed to assure availability of  
 3 reliable broker-dealers, investment advisers, and agents engaged  
 4 in and in connection with the issuance, barter, sale, purchase,  
 5 transfer, or disposition of securities in this state.

6 It is the intent and purpose of this chapter to delegate and grant to and  
 7 vest in the secretary of state, the securities division, and the securities  
 8 commissioner full and complete power to carry into effect and  
 9 accomplish the purpose of this chapter and to charge them with full and  
 10 complete responsibility for its effective administration.

11 (h) It is the duty of a prosecuting attorney, as well as of the  
 12 attorney general, to assist the securities commissioner upon the  
 13 commissioner's request in the prosecution to final judgment of a  
 14 violation of the penal provisions of this chapter and in a civil  
 15 proceeding or action arising under this chapter. If the commissioner  
 16 determines that an action based on the securities division's  
 17 investigations is meritorious:

18 (1) the commissioner or a designee empowered by the  
 19 commissioner shall certify the facts drawn from the investigation  
 20 to the prosecuting attorney of the judicial circuit in which the  
 21 crime may have been committed;

22 (2) the commissioner and the securities division shall assist the  
 23 prosecuting attorney in prosecuting an action under this section,  
 24 which may include a securities division attorney serving as a  
 25 special deputy prosecutor appointed by the prosecuting attorney;

26 (3) a prosecuting attorney to whom facts concerning fraud are  
 27 certified under subdivision (1) may refer the matter to the  
 28 attorney general; and

29 (4) if a matter has been referred to the attorney general under  
 30 subdivision (3), the attorney general may:

31 (A) file an information in a court with jurisdiction over the  
 32 matter in the county in which the offense is alleged to have  
 33 been committed; and

34 (B) prosecute the alleged offense.

35 (i) The securities commissioner shall take, prescribe, and file the  
 36 oath of office prescribed by law. The securities commissioner, ~~senior~~  
 37 ~~investigator, the chief deputy commissioner, and each deputy~~  
 38 **attorney or investigator designated by the commissioner** are police  
 39 officers of the state and shall:

40 (1) have all the powers and duties of police officers in making  
 41 arrests for violations of this chapter, or in serving any process,  
 42 notice, or order connected with the enforcement of this chapter  
 43 by whatever officer or authority or court issued; ~~The securities~~  
 44 ~~commissioner, the deputy commissioners for enforcement, and~~  
 45 ~~the investigators and~~

46 (2) comprise the enforcement department of the division;  
 47 and are considered a criminal justice agency for purposes of IC 5-2-4  
 48 and IC 10-13-3.

49 (j) The securities commissioner and each employee of the  
 50 securities division shall be reimbursed for necessary hotel and travel  
 51 expenses when required to travel on official duty. Hotel and travel

reimbursements shall be paid in accordance with the travel regulations prescribed by the budget agency.

(k) It is unlawful for the secretary of state, the securities commissioner, or the securities division's employees to use for personal benefit information that is filed with or obtained by the securities division and that is not made public. No provision of this chapter authorizes the secretary of state, the securities commissioner, or the employees of the securities division to disclose information except among themselves, or when necessary or appropriate, in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the secretary of state, the securities commissioner, or the securities division or its employees.

(l) The commissioner may honor requests from interested persons for interpretative opinions and from interested persons for determinations that the commissioner will not institute enforcement proceedings against specified persons for specified activities. A determination not to institute enforcement proceedings must be consistent with this chapter. A person may not request an interpretive opinion concerning an activity that:

- (1) occurred before; or
- (2) is occurring on;

the date that the opinion is requested. The commissioner shall charge a fee of one hundred dollars (\$100) for an interpretative opinion or determination.

SECTION 4. IC 23-2-1-17.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 17.1. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, the commissioner may investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the commissioner may bring an action in the name and on behalf of the state against the person and any other person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the commissioner, the court shall enter an order of the commissioner directing rescission, restitution, or disgorgement to a person who has violated this chapter or a rule or order under this chapter. In a court proceeding, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance of a defendant and the defendant's employees or agents and the production of documents, books, and records as may appear necessary for the hearing of the petition, to testify and give evidence

concerning the acts or conduct or things complained of in the action. In the action, the circuit or superior courts shall have jurisdiction of the subject matter. The court may not require the commissioner to post a bond.

(b) Upon the issuance of an order or notice by the commissioner under subsection (a), the commissioner shall promptly notify the respondent that it has been issued and the reasons it has been issued and that upon the receipt of a written request the matter will be set down for a hearing to commence within forty-five (45) business days after receipt of the request unless the respondent consents to a later date. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing may modify or vacate the order or extend it until final determination.

(c) In a proceeding in a circuit or superior court under this section, the commissioner shall be entitled to recover all costs and expenses of investigation to which the commissioner would be entitled in an administrative proceeding under section 16(d) of this chapter, and the court shall include the costs in its final judgment.

(d) The commissioner shall notify the insurance commissioner when an administrative action or civil proceeding is filed under this section.

**(e) A person who has:**

**(1) an order of rescission, restitution, or disgorgement entered against the person; or**

**(2) a civil penalty imposed upon the person;**

**under this chapter that has not been satisfied in full is not eligible for issuance or renewal of any license from any agency, board, commissioner, officer, department, or bureau of state government.**

SECTION 5. IC 23-2-1-18.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18.1. **(a)** A person who knowingly violates this chapter commits a Class C felony.

**(b) An action for a violation of section 3 or 8(a) of this chapter may be brought in:**

**(1) the county where the violation allegedly occurred; or**

**(2) Marion County.**

SECTION 6. IC 23-2-2.5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. A registration by notification may be renewed by submitting to the commissioner a registration renewal form ~~no not~~ later than ~~thirty (30) days prior to the expiration of the registration unless that thirty (30) day period is waived by the commissioner.~~ **the date the registration is due to expire.** If no stop order or other order under section 14 of this chapter is in effect, registration of the offer is renewed at the time the registration would have expired. A renewal is effective for a period of one (1) year unless the commissioner specified a shorter period.

SECTION 7. IC 23-2-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to

engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny, suspend, or revoke the license of a licensee or the registration of a registrant if the licensee or the registrant:

- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) is insolvent;
- (3) has violated any provision of this chapter;
- (4) has knowingly filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact or if a representation becomes false after the filing but during the term of a license or certificate of registration as provided in subsection (g); or
- (5) has been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit.

(d) The commissioner may not enter a final order denying, suspending, or revoking the license of a licensee or the registration of a registrant without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence within fifteen (15)

business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

(e) IC 4-21.5 does not apply to a proceeding under this section.

(f) If:

(1) a licensee desires to have a previously unregistered employee begin engaging in origination activities; or

(2) an individual who was previously registered under this chapter is employed by another licensee who desires to have the registrant engage in origination activities;

the employer licensee shall, within ~~fifteen (15)~~ **five (5) business** days after the employee first conducts origination activities, submit to the commissioner, on a form prescribed by the commissioner, notice of the registrant's employment. If the employee has not previously been registered, the licensee shall submit evidence that the employee has completed the education requirements of section 21 of this chapter.

(g) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of a change in material fact or statement.

SECTION 8. IC 23-2-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. (a) The commissioner may do the following:

(1) Adopt rules under IC 4-22-2 to implement this chapter.

(2) Make investigations and examinations:

(A) in connection with any application for licensure or for registration of a licensee or registrant or with any license or certificate of registration already granted; or

(B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.

(3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.

(4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under

subdivision (2). The commissioner may also bring an action on behalf of the state to enjoin a person from violating this chapter. The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set within fifteen (15) days after the commissioner receives a written request from the person requesting a hearing.

(5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

(9) Receive reports of investigators or other officers or employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

**(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:**

**(A) occurred before; or**

**(B) is occurring on;**

**the date the opinion or determination is requested.**

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by

1 written order or in open court, that:

2 (1) any evidence the witness gives, or evidence derived from that  
3 evidence, may not be used in any criminal proceedings against  
4 that witness, unless the evidence is volunteered by the witness or  
5 is not responsive to a question; and

6 (2) the witness must answer the questions asked and produce the  
7 items requested.

8 A grant of use immunity does not prohibit evidence that the witness  
9 gives in a hearing, investigation, or inquiry from being used in a  
10 prosecution for perjury under IC 35-44-2-1. If a witness refuses to give  
11 the evidence after ~~he~~ **the witness** has been granted use immunity, the  
12 court may find ~~him~~ **the witness** in contempt.

13 (c) In any prosecution, action, suit, or proceeding based upon or  
14 arising out of this chapter, the commissioner may sign a certificate  
15 showing compliance or noncompliance with this chapter by any person.  
16 This shall constitute prima facie evidence of compliance or  
17 noncompliance with this chapter and shall be admissible in evidence in  
18 any action at law or in equity to enforce this chapter.

19 **(d) If:**

20 **(1) a person disobeys any lawful:**

21 **(A) subpoena issued under this chapter; or**

22 **(B) order or demand requiring the production of any**  
23 **books, accounts, papers, records, documents, or other**  
24 **evidence or information as provided in this chapter; or**

25 **(2) a witness refuses to:**

26 **(A) appear when subpoenaed;**

27 **(B) testify to any matter about which the witness may be**  
28 **lawfully interrogated; or**

29 **(C) take or subscribe to any oath required by this**  
30 **chapter;**

31 **the circuit or superior court of the county in which the hearing,**  
32 **inquiry, or investigation in question is held, if demand is made or**  
33 **if, upon written petition, the production is ordered to be made, or**  
34 **the commissioner or a hearing officer appointed by the**  
35 **commissioner, shall compel compliance with the lawful**  
36 **requirements of the subpoena, order, or demand, compel the**  
37 **production of the necessary or required books, papers, records,**  
38 **documents, and other evidence and information, and compel any**  
39 **witness to attend in any Indiana county and to testify to any matter**  
40 **about which the witness may lawfully be interrogated, and to take**  
41 **or subscribe to any oath required.**

42 **(e) If a person fails, refuses, or neglects to comply with a court**  
43 **order under this section, the person shall be punished for contempt**  
44 **of court.**

45 **SECTION 9. IC 23-2-5-22 IS ADDED TO THE INDIANA CODE**  
46 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**  
47 **JULY 1, 2006]: Sec. 22. (a) An appeal may be taken by:**

48 **(1) any loan broker or principal upon whose application for**  
49 **registration for a loan broker license is granted or denied,**  
50 **from any final order of the commissioner concerning the**

1 application or registration;

2 (2) any applicant for registration as a loan broker or  
3 originator, from any final order of the commissioner  
4 affecting the application or registration as a loan broker or  
5 originator;

6 (3) any person against whom a civil penalty is imposed under  
7 section 14(a) of this chapter, from the final order of the  
8 commissioner imposing the civil penalty; or

9 (4) any person who is named as a respondent, from any final  
10 order issued by the commissioner under section 10 or 11 of  
11 this chapter;

12 to the Marion circuit court or to the circuit or superior court of the  
13 county where the person taking the appeal resides or maintains a  
14 place of business.

15 (b) Not later than twenty (20) days after the entry of the order,  
16 the commissioner shall be served with:

17 (1) a written notice of the appeal stating the court to which  
18 the appeal will be taken and the grounds upon which a  
19 reversal of the final order is sought;

20 (2) a demand in writing from the appellant for a certified  
21 transcript of the record and of all papers on file in the  
22 commissioner's office affecting or relating to the order; and

23 (3) a bond in the penal sum of five hundred dollars (\$500) to  
24 the state of Indiana with sufficient surety to be approved by  
25 the commissioner, conditioned upon the faithful prosecution  
26 of the appeal to final judgment and the payment of all costs  
27 that are adjudged against the appellant.

28 (c) Not later than ten (10) days after the commissioner is  
29 served with the items listed in subsection (b), the commissioner  
30 shall make, certify, and deliver to the appellant the transcript, and  
31 the appellant shall, not later than five (5) days after the date the  
32 appellant receives the transcript, file the transcript and a copy of  
33 the notice of appeal with the clerk of the court. The notice of appeal  
34 serves as the appellant's complaint. The commissioner may appear  
35 and file any motion or pleading and form the issue. The cause shall  
36 be entered on the trial calendar for trial de novo and given  
37 precedence over all matters pending in the court.

38 (d) The court shall receive and consider any pertinent oral or  
39 written evidence concerning the order of the commissioner from  
40 which the appeal is taken. If the order of the commissioner is  
41 reversed, the court shall in its mandate specifically direct the  
42 commissioner as to the commissioner's further action in the matter.  
43 The commissioner is not barred from revoking or altering the  
44 order for any proper cause that accrues or is discovered after the  
45 order is entered. If the order is affirmed, the appellant is not  
46 barred after thirty (30) days from the date the order is affirmed  
47 from filing a new application if the application is not otherwise  
48 barred or limited. During the pendency of the appeal, the order  
49 from which the appeal is taken is not suspended but remains in  
50 effect unless otherwise ordered by the court. An appeal may be

- 1       **taken from the judgment of the court on the same terms and**
- 2       **conditions as an appeal is taken in civil actions.**  
          (Reference is to SB 11 as introduced.)

**and when so amended that said bill be reassigned to the Senate Committee on Insurance and Financial Institutions.**

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GARTON, Chairperson